

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GETTY IMAGES (US), INC.,
Plaintiff,

v.

MICROSOFT CORPORATION,
Defendant.

**DECLARATION OF
YOKO MIYASHITA**

I, **YOKO MIYASHITA**, declare as follows:

1. I am employed by Plaintiff Getty Images (US), Inc. ("Getty Images") as Vice President, Deputy General Counsel. I submit this declaration in support of Getty Images' application for a preliminary injunction.

My Background.

2. I have worked for Getty Images as in-house counsel since July 2005. My responsibilities as Deputy General Counsel include legal oversight of product and business development and commercial licensing functions.

Getty Images' Business Of Creating And Distributing Online Images.

3. Getty Images is one of the world's largest providers of commercial visual content and the leading provider of commercial images online. It supplies imagery, video, and music to businesses and consumers for a wide variety of uses, including websites, books, newspapers, magazines, film and television production, advertisements, and product packaging. Getty Images' collection of works includes many of the most iconic, creative and engaging photographic images ever created.

4. Getty Images generates revenue primarily by licensing the rights to use its content. Getty Images owns much of the content it licenses, but also acts as a distributor for more than 150,000 other content suppliers, including photographers, illustrators, filmmakers, media organizations, and other stock photo companies, all of whom expressly contract with Getty Images for the collection and distribution of royalties and management of their intellectual property. These content suppliers retain ownership of the copyrights in their works, but grant Getty Images by contract the right to market, distribute, and license those works to third parties. Getty Images owns or represents more than 80 million unique works of digital imagery.

5. Getty Images was the first company to license imagery via the Internet and currently delivers virtually all of its content through digital means. Getty Images maintains websites at www.gettyimages.com and istock.com, where visitors can search and view millions of images and obtain licenses to use them. Getty Images has invested and continues to invest substantial resources in operating these websites in order to provide potential customers with the means to browse its images and acquire rights to use them. Screenshots showing samples of Getty Images' website and online store are submitted herewith as Attachment A.

6. In March 2014, Getty Images revolutionized the way images are licensed and distributed online by launching its "Embed" feature. This feature provides noncommercial websites and users of social media with free access to 50 million of Getty Images' copyrighted images. The Embed tool is a short snippet of code (computer instructions) that a website publisher includes in a webpage or a social media user includes in a post in order to embed a specific image within their content. The code automatically causes the computer of a website visitor or a social media participant to obtain the specified image from a Getty Images server, where the image actually resides, and displays the selected image in an embedded viewer that

includes photographer attribution and the Getty Images name and logo. A click on the image leads the viewer to a page where he or she may license commercial uses on a paid basis. Screenshots showing how Getty Images makes its Embed feature available to website publishers are submitted herewith as Attachment B, and examples of how website publishers have used the Embed feature are submitted as Attachment C.

Microsoft's Bing Image Widget.

7. On or about Friday, August 22, 2014, Microsoft introduced a new service, which it calls the "Bing Image Widget." Microsoft markets the Bing Image Widget to website publishers as a tool that "enhances your web site with the power of Bing Image Search and provides your users with beautiful, configurable image galleries and slideshows." I and Getty Images' other executives first learned of this new service on August 26, 2014.

8. Similar to Getty Images' Embed tool, the Bing Image Widget allows website publishers to copy a snippet of code from the Bing Image Widget website and paste it directly onto pages on the publisher's own website. Once the code has been added to the website, the site will contain an embedded panel, bearing the "Bing" logo, in which Microsoft displays images that it determines to be most relevant, given the website publisher's customization of the Bing Image Widget. Screenshots illustrating Microsoft's Bing Image Widget, how users can configure it, and an example of the website from which those images were taken are submitted herewith as Attachment D.

9. Microsoft allows website publishers to customize certain features of the display before he or she copies and pastes the Bing Image Widget code into his or her own pages (the code snippet will change depending on the choices that the website publisher makes). For example, Microsoft gives the website publisher the option to have the images presented in either

a “collage” or “slideshow” format. If the publisher chooses the “collage” format, the display panel will include a number of different thumbnail-sized images that Microsoft determines are relevant to the particular search query. If the website publisher chooses instead to have a “slideshow,” then the display panel will include a number of larger-sized images – between 1 and 25, at the publisher’s election – that will appear one at a time, swapping out every few seconds.

10. The Bing Image Widget is populated with images that Microsoft or its users do not have rights to copy, distribute or display. Instead, Microsoft appears to draw from the vast repository of images that Bing Image Search has already copied and indexed from the Internet at large, including Getty Images’ copyrighted images, even though Microsoft has no license or permission from Getty Images to do so.

11. There is no warning or notification that the image comes from a third party source website and no context that surrounds the image as it appears on that third-party site, without separate steps taken by the end-user. Further masking the image’s origin (and serving Microsoft’s own commercial interests), clicking the image takes the user not to the third-party source website, but instead to Microsoft’s own Bing Image Search site.

Irreparable Harm.

12. Microsoft’s Bing Image Widget has caused – and unless enjoined will continue to cause – irreparable harm to Getty Images, as the owner or exclusive licensee of millions of the images that can be displayed through the Bing Image Widget.

13. Getty Images’ business depends critically on licensing to website publishers the right to use its images. Microsoft markets the Bing Images Widget to website publishers as a tool that “enhances your web site with the power of Bing Image Search and provides your users

with beautiful, configurable image galleries and slideshows.” Because Microsoft, through the Bing Image Widget, provides website publishers with a virtually limitless collection of online images for display on their websites for free and without restriction, those website publishers in turn have little or no incentive to license such uses of copyrighted images from Getty Images. Microsoft’s Bing Image Widget thus destroys Getty Images’ actual and potential business relationships and licensing opportunities, and engages in direct competition with Getty Images’ licensed products that threatens to undermine Getty Images’ current and future market share.

14. Furthermore, when Microsoft displays Getty Images’ protected content through the Bing Image Widget, such that the image is displayed on top of Microsoft’s own “Bing” brand name, Microsoft misappropriates the customer goodwill that Getty Images has created through years of industry-leading innovations in licensing high-quality content, including through its Embed tool.

15. The loss in revenue caused by Microsoft’s Bing Image Widget is impossible to quantify. Given the scale of Microsoft’s conduct—which could result in the display of millions of Getty Image’s protected images across millions of different websites—the damages from even the *direct* consequences of its infringement will be incalculable. Also, Microsoft supplies images to the Bing Image Widget with no controls on their downstream use, leaving users free to copy and further distribute Getty Images’ images in ways that cause additional, and incalculable, damages. Given Microsoft’s double-digit share of the online search market, broad adoption of the Bing Image Widget will distort the market for images, giving the misimpression that copyrighted materials can be used without payment or permission.

16. It is similarly impossible to calculate the loss in revenue to Getty Images from Microsoft’s diversion of consumers who would have otherwise used Getty Images’ free Embed

tool. Getty Images offers the Embed tool for the specific reasons of building awareness of its content and photographers, increasing its exposure to new consumers and creating opportunities for sales, licenses and other sources of revenue. Through the Embed tool, Getty Images is also able to collect data regarding how its images are being used, and that data can further be used to improve Getty Images' services and its relationships with customers as well as create monetization opportunities. The loss to Getty Images of these benefits from Microsoft's conduct is incalculable.

17. Although it has only just been released, the Bing Image Widget has already been implemented by websites around the world. With each day, more and more websites appear to be using the Bing Image Widget to display unlicensed images. This is in direct contrast to Getty Images who licenses its images, including through the Embed tool, with proper rights and permissions from photographers and copyright holders. Thus, absent immediate relief, Microsoft's use of the Bing Image Widget will cause Getty Images to suffer immense and irreparable harm.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 2, 2014.


Yoko Miyashita